

## **HARDWARE MAINTENANCE AGREEMENT**

### **1. DEFINITIONS**

In this Agreement, the following terms shall have the following meanings:

“Bleep”	Bleep 2000 (Computers) Limited trading as Bleep Computing.
“Billing Rates”	Bleep’s personnel charges as notified from time to time to the Client, plus the cost of any materials provided.
“Equipment”	The items of computer hardware identified by type and serial number in the Invoice including any modifications thereto and any manuals or other materials supplied by Bleep ancillary thereto.
“Maintenance Fee”	The periodic fee specified in Invoice payable by the Client to Bleep in respect of the Maintenance Services subject to any increases pursuant to Clauses 3.5 below.
“Service Levels”	Service levels as set out in the Invoice.
“Services”	Accordance with Clause 2 below.
“Site”	The Customer's addresses
“Term”	A period of twelve months measured from the Start Date or any anniversary thereof.
“Terms and Conditions”	Bleep’s general terms and conditions which also apply to the provision of the Maintenance Services to the extent that they do not conflict with this Agreement.
“Working Day”	Monday to Friday inclusive but excluding public and bank holidays.
“Working Hours”	9.30 a.m. to 5.30 p.m. London time on a Working Day.

### **2. THE MAINTENANCE SERVICES**

- 2.1 In consideration of the payment of the Maintenance Fee and any other fees payable pursuant hereto by the Customer to Bleep, the Customer shall benefit from the services set out in Clauses 2.2-2.4 below during the Working Hours.
- 2.2 Bleep will provide the Customer with such preventative maintenance as Bleep shall deem necessary to keep the Equipment in working order.
- 2.3 Bleep will provide the Customer with telephonic response to fault calls and, where Bleep deems it necessary, on-site remedial assistance as soon as reasonably

practicable, including, where necessary, the replacement of worn or defective parts. User changeable parts, ie those that can be replaced without the use of tools, eg. a mouse, may be despatched to the site for the user to fit.

- 2.4 Bleep may, at its option, and with the prior agreement of the Customer, remove the Equipment requiring remedy to Bleep's premises for further maintenance work.
- 2.5 The Customer must not do and must procure that none of its employees or contractors does anything which might aggravate any problem with the Equipment.
- 2.6 For the avoidance of doubt, the Services specified in Clause 3.6 below do not form part of the Services.
- 2.7 Bleep shall not be obliged to provide any service whatsoever in respect of any part of the Equipment if it is not, in Bleep 's reasonable opinion, practicable to render such service due to alterations or connections which have been made to the Equipment by an entity other than Bleep.
- 2.8 If at any time, in Bleep 's opinion, any part of the Equipment is no longer capable of being repaired economically, Bleep shall submit an estimate of the refurbishment or cost to the Customer for approval. If no agreement is reached within a month for the work to proceed, Bleep may regard the item of Equipment as deleted from the Agreement.

### **3. CHARGES**

- 3.1 The Maintenance Fee shall cover the provision of the Services only in relation to the Equipment and not to other hardware.
- 3.2 The Maintenance Fee for the first Term shall be paid by the Customer to Bleep on or before the date of execution of this Agreement.
- 3.3 The Customer may extend this Maintenance Agreement by paying the then prevailing Maintenance Fee before the expiry of the then current Term.
- 3.4 If the Customer fails to pay any sum due under this Agreement within 30 days of its due date, Bleep shall be entitled to charge interest on a daily basis on all overdue amounts from the date of such failure until payment (both before and after judgement) at an annual rate 4% above the base rate for the time being in force of Barclays Bank plc.
- 3.5 Bleep shall be entitled to increase the Maintenance Fee with effect from the next Term, subject to 14 days' prior written notice to the Customer.

3.6 Bleep will be entitled to charge the Customer additional charges at its Billing Rates for time which in the reasonable opinion of Bleep it spends in relation to or on account of any of the following:-

- 3.6.1 any failure of the Customer or any of its employees to comply with the terms of this Agreement or any user manual or other documentation supplied by Bleep or the manufacturer;
- 3.6.2 any tampering with the Equipment whilst on the Customer's site; or
- 3.6.3 any use of the Equipment by the Customer in conjunction with any other equipment or any software not previously approved by Bleep;
- 3.6.4 electrical work external to the Equipment;
- 3.6.5 maintenance of accessories to the Equipment not supplied by Bleep;
- 3.6.6 repair of damage which in Bleep 's reasonable opinion results from:-
  - (i) accident, transportation, neglect or misuse of the Equipment during the course of this Agreement; or
  - (ii) modifications to the Equipment made during the course of this Agreement without Bleep 's prior written consent; or
  - (iii) unauthorised attempts by or on behalf of the Customer to repair the Equipment, failure or surge of electrical power, or failure of air conditioning or humidity control;
  - (iv) an incident involving the use of labels in any type of printer;
  - (v) the failure of some other equipment or installation to which the Equipment is directly or indirectly connected at the relevant time
  - (vi) acts of God, fire, theft, flood, outbreak of war, civil commotion or riot;
  - (vii) the attachment or removal of accessories, attachments or other devices by the Customer or a third party;
  - (viii) the supply and fitting of consumable accessories such as ribbons, tapes or disks;
  - (ix) painting, refurbishing or cleaning the exterior of the Equipment;
  - (x) reconditioning or replacement of the Equipment or parts thereof required in Bleep 's reasonable opinion as a result of fair wear and tear;
  - (xi) putting the Equipment into proper working condition at the commencement of the Term if the Equipment has not been supplied by Bleep;

- (xii) relocation of the Equipment;
- (xiii) the installation of an operating system software upgrade;
- (xiv) providing the Services outside the Working Hours;
- (xv) providing any other Services not covered herein.

#### **4. CUSTOMER'S OBLIGATIONS**

- 4.1 The Customer shall keep and operate the Equipment in accordance with the manufacturer's recommendations with particular attention to environmental conditions, use of ancillary or peripheral equipment and normal usage.
- 4.2 The Customer shall give Bleep at least 7 days' written notice of its intention to move the Equipment from the Site. Bleep reserves the right, to be exercised reasonably, to amend the Maintenance Fee or delete the relocated items of the Equipment from the Agreement on account of such move.
- 4.3 The Customer shall ensure that all datafiles and software are adequately replicated.
- 4.4 The Customer will provide Bleep with reasonable access at all reasonable times to the Equipment throughout the course of this Agreement for the purposes of maintenance and inspection.
- 4.5 The Customer undertakes to Bleep throughout the term of this Agreement:
  - 4.5.1 to grant Bleep such access to the Equipment as Bleep shall from time to time reasonably require in order to discharge its obligations hereunder;
  - 4.5.2 to make available at the Site such facilities as Bleep shall reasonably require in order to discharge its obligations hereunder including without limitation adequate work space storage and office furniture and equipment;
  - 4.5.3 to take all reasonable precautions to protect the health and safety of Bleep 's employees agents and sub-contractors while on the Customer's Site; and
  - 4.5.4 to make available the Equipment and supply all documentation and other information necessary for Bleep to diagnose any fault in the Equipment.

#### **5. WARRANTIES AND INDEMNITY**

- 5.1 Bleep warrants and undertakes to the Customer:
  - 5.1.1 to perform the Services with reasonable care and skill;
  - 5.1.2 that it shall have a free and unencumbered title to any replacement parts for the Equipment supplied hereunder; and

- 5.1.3 that the Customer will enjoy quiet possession of any such replacement parts and that the same will be of merchantable quality and reasonably fit for their purpose.
- 5.2 Bleep does not warrant that the Services or other services provided hereunder will cause the Equipment to operate without interruption or error.
- 5.3 Subject to the foregoing all conditions warranties terms and undertakings express or implied statutory or otherwise in respect of the performance by Bleep of the Services or other services provided hereunder are hereby excluded.
- 5.4 The Customer shall fully indemnify Bleep in respect of any claim, loss or liability or damage sustained by Bleep as a result of any act or omission by the Customer or any of the Customer's employees, agents or servants.
- 5.5 The Customer hereby warrants that it has not been induced to enter into this Agreement by any prior representations whether oral or written except as expressly contained in this Agreement and the Customer hereby waives any claim for breach of any such representations which are not so contained.

## **6. REPLACEMENT OF PARTS**

- 6.1 Bleep reserves the right to supply new second-hand or reconditioned replacement parts in the performance of its duties hereunder.
- 6.2 Any parts of the Equipment replaced by Bleep pursuant to Clause 6.1 above shall upon replacement become the property of Bleep and the Customer warrants that either it shall have a free and unencumbered title to such replaced parts or (where the Equipment is leased or charged) that it shall have obtained all necessary consents and authorities to part with possession and give good title to the replaced parts.

## **7. LIABILITY**

- 7.1 Bleep shall not be liable for any loss or damage of whatsoever nature suffered by the Customer arising out of or in connection with any breach of this Agreement by the Customer or any act, misrepresentation, error or omission made by or on behalf of the Customer or arising from any cause beyond Bleep 's reasonable control.
- 7.2 Bleep is not liable for any indirect loss, consequential loss, loss of profits, revenue, data or goodwill howsoever arising suffered by the Customer and arising in any way in connection with this Agreement or any other agreement entered into between the Customer and Bleep or for any liability of the Customer to any third party.
- 7.3 Subject to Clause 7.4 below, no matter how many claims are made and whatever the basis of such claims, Bleep 's maximum aggregate liability to the Customer under or

in connection with this Agreement, in respect of any direct loss (or any other loss to the extent that such loss is not excluded by Clauses 7.1-7.2 above or otherwise) whether such claim arises in contract or in tort shall not exceed a sum equal to twice the Maintenance Fee.

- 7.4 None of the clauses above shall apply so as to restrict liability for death or personal injury resulting from the negligence of Bleep or its appointed agents.
- 7.5 The Customer agrees that it is in a better position to foresee and evaluate any loss it may suffer in connection with this Agreement and that the Maintenance Fee has been calculated on the basis of the limitations and exclusions in this Clause 7 and that the Customer will effect such insurance as is suitable having regard to its particular circumstances and the terms of this Clause 7.

## **8. TERM AND TERMINATION**

- 8.1 This Agreement shall continue for an initial term of 12 months and thereafter from year to year unless and until the Licence expires or is terminated or this Agreement is terminated in accordance with the provisions of this Clause 8.
- 8.2 Either party may terminate this Agreement immediately by written notice to the other in the event that any of the following occur:-
  - 8.2.1 the other fails to pay any amount due hereunder within 30 days of its due date or breaches any term of this Agreement and such breach is incapable of remedy or continues for a period of 30 days after notice requiring the same to be remedied has been given by the terminating party to the other party; or
  - 8.2.2 an order is made or a resolution is passed for the winding up of the other party, or if a provisional liquidator is appointed in respect of the other party, or if an administration order is made in respect of the other, or if a receiver is appointed in respect of the other or all or any of its assets or if the other is unable to pay any of its debts within the meaning of Section 123 of the Insolvency Act 1986, or if any voluntary arrangement is proposed under Part 1 of the Insolvency Act 1986 in respect of the other.
- 8.3 Bleep may terminate this Agreement forthwith if the Customer purports to breach Clause 9.4 hereunder.
- 8.4 Bleep may terminate this Agreement at any anniversary of this Agreement by giving the Customer not less than 30 days' written notice.
- 8.5 Termination of this Agreement shall be without prejudice to any other rights or remedies of the terminating party.

- 8.6 This Agreement shall terminate immediately and automatically if the Licence terminates.
- 8.7 This Agreement shall terminate automatically 14 days after the date of the expiry of any Term if the Customer has not paid the Maintenance Fee for the then newly commenced Term.
- 8.8 In the event that Bleep terminates this Agreement otherwise than for breach or default of the Client and such termination takes effect during the course of a period for which the Maintenance Fee has been paid, then Bleep shall in full and final settlement of its obligations and liability hereunder make a pro rata refund of such Maintenance Fee for the said unexpired Term.

## **9. GENERAL**

- 9.1 Subject to Clause 9.2, this written Agreement together with the Invoice and the Terms and Condition, constitutes the entire agreement between the parties hereto relating to the subject matter hereof and neither party has relied on any representation made by the other party unless such representation is expressly included herein. Nothing in this Clause 9.1 shall relieve either party of liability for fraudulent misrepresentations and neither party shall be entitled to any remedy for either any negligent or innocent misrepresentation except to the extent (if any) that a court or arbitrator may allow reliance on the same as being fair and reasonable.
- 9.2 No change, alteration or modification to this Agreement shall be valid unless in writing and signed by duly authorised representatives of both parties.
- 9.3 If any provision of this Agreement or part thereof shall be void for whatever reason, it shall be deemed deleted and the remaining provisions shall continue in full force and effect.
- 9.4 The rights and obligations of the Customer under this Agreement are personal to the Customer and the Customer undertakes that it shall not, without the prior written consent of Bleep, assign, lease, charge, sub-license, or otherwise transfer such rights and obligations in whole or in part.
- 9.5 Bleep reserves the right to sub-contract any of the work required to fulfil its obligations hereunder.
- 9.6 Any notice given pursuant hereto may be served personally or sent by pre-paid registered letter or recorded delivery to the addresses given hereabove. Such notice shall be deemed to have been duly served upon and received by the addressee, when served personally, at the time of such service or, when posted, 48 hours after the same shall have been put into the post correctly addressed and pre-paid.

- 9.7 Neither party shall be liable for any loss suffered by the other party or be deemed to be in default for any delays or failures in performance hereunder (other than in relation to payment) resulting from acts or causes beyond its reasonable control or from any acts of God, acts or regulations of any governmental or supra-national authority.
- 9.8 Any delay or forbearance by either party in enforcing any provisions of this Agreement or any of its rights hereunder shall not be construed as a waiver of such provision or right thereafter to enforce the same.
- 9.9 Clause headings have been included in this Agreement for convenience only and shall not be considered part of, or be used in interpreting, this Agreement.
- 9.10 This Agreement shall be governed by the laws of England and the parties submit to the exclusive jurisdiction of the Courts of England and Wales.